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HOUSE BILL 380

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO ENERGY CONSERVATION; ENACTING THE ENERGY EFFICIENCY
AND RENEWABLE ENERGY BONDING ACT; PROVIDING PROCEDURES FOR
INSTALLING ENERGY EFFICIENCY MEASURES IN STATE AND SCHOOL
DISTRICT BUILDINGS; AUTHORIZING THE ISSUANCE OF ENERGY
EFFICIENCY BONDS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 1
through 12 of this act may be cited as the "Energy Efficiency
and Renewable Energy Bonding Act".

Section 2. ~~[NEW MATERIAL]~~ FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) the technology and economics of energy
efficiency and energy conservation have advanced to the point
where there can be no doubt that it is cost-effective to

1 install and utilize energy efficiency measures to the maximum
2 possible extent;

3 (2) renewable energy offers a clean, silent
4 and reliable source of energy that produces energy during peak
5 demand, lessens demand and increases reliability of the grid
6 and has strong economic development potential for New Mexico;

7 (3) use of renewable energy by state agencies
8 has significant educational and economic benefits for New
9 Mexico;

10 (4) a program should be implemented
11 immediately in New Mexico whereby each building owned by the
12 state or a school district should be retrofitted with energy
13 efficiency measures in order to save both valuable state
14 revenues and fossil fuels; and

15 (5) such a program would not only result in
16 cost savings to the state but would also help reduce dependence
17 on fossil fuels, therefore contributing to cleaner air and
18 water, and would benefit the economic development of this state
19 by providing additional jobs.

20 B. The purpose of the Energy Efficiency and
21 Renewable Energy Bonding Act is to provide a mechanism to fund
22 energy efficiency measures in state and school district
23 buildings with the proceeds of bonds that will be secured by a
24 pledge of a portion of gross receipts tax revenues that
25 represents a fraction of the resulting cost savings.

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1 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
2 Energy Efficiency and Renewable Energy Bonding Act:

3 A. "authority" means the New Mexico finance
4 authority;

5 B. "bonds" means energy efficiency bonds;

6 C. "department" means the energy, minerals and
7 natural resources department;

8 D. "energy efficiency measure" means a modification
9 to a building that is designed to reduce energy consumption or
10 operating costs and may include:

11 (1) insulation of the building structure or
12 systems within the building;

13 (2) storm windows or doors, caulking or
14 weatherstripping, multiglazed windows or doors, heat-absorbing
15 or heat-reflective glazed and coated window or door systems,
16 additional glazing, reductions in glass area or other window
17 and door system modifications that reduce energy consumption;

18 (3) automated or computerized energy control
19 systems;

20 (4) heating, ventilating or air conditioning
21 system modifications or replacements;

22 (5) replacement or modification of lighting
23 fixtures to increase the energy efficiency of the lighting
24 system;

25 (6) energy recovery systems;

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1 (7) on-site photovoltaics, solar heating and
2 cooling systems or other renewable energy systems;

3 (8) cogeneration or combined heat and power
4 systems that produce steam, chilled water or forms of energy
5 such as heat, as well as electricity, for use primarily within
6 a building or complex of buildings;

7 (9) energy conservation measures that provide
8 long-term operating cost reductions; or

9 (10) maintenance and operation management
10 systems that provide long-term operating cost reductions;

11 E. "fund" means the energy efficiency and renewable
12 energy bonding fund; and

13 F. "state building" means a building, the title to
14 which is held by the state or an agency of the state.

15 Section 4. [NEW MATERIAL] STATE PLAN FOR ENERGY
16 EFFICIENCY MEASURES.--

17 A. The department shall develop a state plan for
18 the installation, no later than the end of fiscal year 2010, of
19 energy efficiency measures in state buildings and buildings
20 owned by school districts. The plan shall include the maximum
21 amount of on-site renewable energy measures possible while
22 retaining the overall revenue-neutral status of the plan, such
23 that the total cost of the plan is covered entirely by the
24 combined energy savings of both the renewable energy and other
25 energy efficiency measures undertaken. In addition, the plan

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1 shall include a schedule for funding and installing the energy
2 efficiency measures that gives priority to those projects that
3 will realize significant cost savings in the shortest time
4 frame. The department shall develop the plan:

5 (1) for energy efficiency measures in state
6 buildings in conjunction with the property control division of
7 the general services department, the staff architect of the
8 division, the capitol buildings planning commission and other
9 state agencies with control and management over buildings; and

10 (2) for energy efficiency measures in
11 buildings owned by school districts in conjunction with the
12 public education department and the public school facilities
13 authority.

14 B. The plan shall be followed by each state agency
15 and school district in New Mexico, and those agencies and
16 districts shall cooperate with the department in the
17 development and the implementation of the plan.

18 Section 5. [NEW MATERIAL] CONTRACTS FOR THE INSTALLATION
19 OF ENERGY EFFICIENCY MEASURES.--Pursuant to the Procurement
20 Code, the department shall enter into contracts for the
21 installation of energy efficiency measures at one or more of
22 the buildings identified in the state plan. The contracts
23 shall include such provisions concerning payment schedules,
24 monitoring, inspecting, measuring and warranties as are
25 necessary to ensure that the energy efficiency measures will be

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1 installed and the cost savings realized in the manner most
2 beneficial to the state; provided that no contract shall be
3 entered into pursuant to this section without a finding by the
4 department that the cost of the energy savings realized from
5 the energy efficiency measures will be greater than the sum of
6 the expenditures incurred under the contract plus the
7 proportional amount of the debt service due on the bonds issued
8 to finance the contract.

9 Section 6. [NEW MATERIAL] ENERGY EFFICIENCY AND RENEWABLE
10 ENERGY BONDING FUND--PLEDGE OF MONEY IN THE FUND.--

11 A. The "energy efficiency and renewable energy
12 bonding fund" is created as a special fund within the
13 authority. The fund shall be administered by the authority as
14 a special account. The fund shall consist of gross receipts
15 tax revenues distributed to the fund by law, money transferred
16 to the fund pursuant to the provisions of the Energy Efficiency
17 and Renewable Energy Bonding Act and other transfers and
18 appropriations made to the fund. Earnings of the fund shall be
19 credited to the fund. Balances in the fund at the end of any
20 fiscal year shall remain in the fund, except as provided in
21 this section.

22 B. Money in the fund is pledged for the payment of
23 principal and interest on all bonds issued pursuant to the
24 Energy Efficiency and Renewable Energy Bonding Act. Money in
25 the fund is appropriated to the authority for the purpose of

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1 paying debt service, including redemption premiums, on the
2 bonds and the expenses incurred in the issuance, payment and
3 administration of the bonds.

4 C. Money in the fund may be appropriated by the
5 legislature to the department for the purpose of carrying out
6 the provisions of the Energy Efficiency and Renewable Energy
7 Bonding Act; provided that no such appropriation shall be made
8 or, if an appropriation is made, no expenditures shall be made
9 from the appropriation if the authority:

10 (1) estimates that the balances in the fund,
11 during the fiscal year for which the appropriation is made,
12 will be insufficient to make debt service and other required
13 payments including the amount that may be needed for any
14 required reserves; or

15 (2) determines that the expenditure of the
16 appropriation would otherwise impair outstanding bonds.

17 D. On the last day of January and July of each
18 year, the authority shall estimate the amount needed to make
19 debt service and other payments during the next twelve months
20 from the fund on the bonds issued pursuant to the Energy
21 Efficiency and Renewable Energy Bonding Act plus the amount
22 that may be needed for any required reserves and the amount
23 needed to meet any appropriation pursuant to Subsection C of
24 this section. The authority shall transfer to the general fund
25 any balance in the fund above the estimated amounts.

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1 E. Any balance remaining in the fund shall be
2 transferred to the general fund upon certification by the
3 authority that:

4 (1) the secretary of energy, minerals and
5 natural resources and the authority have agreed that the bonds
6 issued pursuant to the Energy Efficiency and Renewable Energy
7 Bonding Act have been retired, that no additional obligations
8 of the fund exist and that no additional expenditures from the
9 fund are necessary; or

10 (2) a court of jurisdiction has ruled that the
11 bonds have been retired, that no additional obligations of the
12 fund exist and that no additional expenditures from the fund
13 are necessary.

14 F. The bonds issued pursuant to the Energy
15 Efficiency and Renewable Energy Bonding Act shall be payable
16 solely from the fund or, with the approval of the bondholders,
17 such other special funds as may be provided by law and do not
18 create an obligation or indebtedness of the state within the
19 meaning of any constitutional provision. No breach of any
20 contractual obligation incurred pursuant to that act shall
21 impose a pecuniary liability or a charge upon the general
22 credit or taxing power of the state, and the bonds are not
23 general obligations for which the state's full faith and credit
24 is pledged.

25 G. The state does hereby pledge that the fund shall

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1 be used only for the purposes specified in this section and
2 pledged first to pay the debt service on the bonds issued
3 pursuant to the Energy Efficiency and Renewable Energy Bonding
4 Act. The state further pledges that any law authorizing the
5 distribution of taxes or other revenues to the fund or
6 authorizing expenditures from the fund shall not be amended or
7 repealed or otherwise modified so as to impair the bonds to
8 which the fund is dedicated as provided in this section.

9 Section 7. [NEW MATERIAL] CALCULATION OF COST SAVINGS--
10 TRANSFERS TO ENERGY EFFICIENCY AND RENEWABLE ENERGY BONDING
11 FUND.--

12 A. Upon the installation of energy efficiency
13 measures in a state or school district building and no later
14 than each May 1 thereafter, the department shall calculate the
15 estimated cost savings, in the form of lower utility payments
16 by the school district or the state, that will be realized in
17 the next fiscal year. The department shall certify the
18 estimate to the department of finance and administration and
19 the general services department or other state agency with
20 jurisdiction, in the case of state buildings, and to the
21 department of finance and administration, the public education
22 department and the school district, in the case of school
23 district buildings.

24 B. In the case of school district buildings, when
25 calculating the state equalization guarantee distribution for a
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1 district pursuant to Section 22-8-25 NMSA 1978, the public
2 education department shall deduct the amount certified for each
3 building in the school district by the energy, minerals and
4 natural resources department. Prior to June 30 of each year
5 the total amount deducted for all school districts shall be
6 transferred to the energy efficiency bonding fund.

7 C. In the case of a state building, the department
8 of finance and administration shall proportionately deduct the
9 amount certified from the operating budget of each agency
10 responsible for paying the utilities. Prior to June 30 of each
11 year the total amount deducted for all agencies and all
12 buildings shall be transferred from the appropriate funds to
13 the energy efficiency and renewable energy bonding fund.

14 Section 8. [NEW MATERIAL] ENERGY EFFICIENCY BONDS
15 AUTHORIZED--CONDITIONS--PROCEDURE.--

16 A. The authority is authorized to issue and sell
17 revenue bonds, known as "energy efficiency bonds" in a total
18 amount not to exceed twenty million dollars (\$20,000,000),
19 payable solely from the fund, in compliance with the Energy
20 Efficiency and Renewable Energy Bonding Act for the purpose of
21 installing energy efficiency measures pursuant to that act when
22 the department has certified the need for the bonds and the
23 conditions of Subsection C of this section have been satisfied.

24 B. The net proceeds from the bonds are appropriated
25 to the department for the purpose of making payments under

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1 contracts for the installation of energy efficiency measures
2 pursuant to the Energy Efficiency and Renewable Energy Bonding
3 Act.

4 C. No bonds shall be issued pursuant to this
5 section unless:

6 (1) the department has entered into one or
7 more contracts pursuant to Section 5 of the Energy Efficiency
8 and Renewable Energy Bonding Act under which the energy
9 efficiency measures will be installed and the resulting cost
10 savings realized within a reasonable time;

11 (2) considering the timeliness and amount of
12 cost savings likely to be realized from the energy efficiency
13 measures installed under the contracts, the department and the
14 authority have agreed on the approximate date when the cost
15 savings are most likely to equal or exceed the debt service due
16 on the bonds; and

17 (3) the debt service on the bonds has been
18 structured so that only minimum or no payments are due until
19 the date that the cost savings equal or exceed the debt
20 service.

21 D. The authority shall issue the bonds pursuant to
22 the New Mexico Finance Authority Act and pursuant to the
23 provisions of that act relating to the form, refunding and
24 procedure except as otherwise provided in the Energy Efficiency
25 and Renewable Energy Bonding Act.

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1 Section 9. [NEW MATERIAL] ENERGY EFFICIENCY AND RENEWABLE
2 ENERGY BONDING ACT IS FULL AUTHORITY FOR ISSUANCE OF BONDS--
3 BONDS ARE LEGAL INVESTMENTS.--

4 A. The Energy Efficiency and Renewable Energy
5 Bonding Act shall, without reference to any other act of the
6 legislature, be full authority for the issuance and sale of
7 energy efficiency bonds, which bonds shall have all the
8 qualities of investment securities under the Uniform Commercial
9 Code and shall not be invalid for any irregularity or defect or
10 be contestable in the hands of bona fide purchasers or holders
11 thereof for value.

12 B. Energy efficiency bonds are legal investments
13 for any person or board charged with the investment of any
14 public funds and are acceptable as security for any deposit of
15 public money.

16 Section 10. [NEW MATERIAL] SUIT MAY BE BROUGHT TO COMPEL
17 PERFORMANCE OF OFFICERS.--Any holder of bonds or any person or
18 officer being a party in interest may sue to enforce and compel
19 the performance of the provisions of the Energy Efficiency and
20 Renewable Energy Bonding Act.

21 Section 11. [NEW MATERIAL] BONDS TAX EXEMPT.--All energy
22 efficiency bonds shall be exempt from taxation by the state or
23 any of its political subdivisions.

24 Section 12. [NEW MATERIAL] RULES--ANNUAL REPORT
25 REQUIRED.--

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1 A. The department shall adopt such rules as are
2 necessary to carry out the provisions of the Energy Efficiency
3 and Renewable Energy Bonding Act.

4 B. No later than December 1 of each year, the
5 department shall report to the legislature and to the governor
6 on its activities during the previous fiscal year in
7 administering the provisions of the Energy Efficiency and
8 Renewable Energy Bonding Act. The report shall include:

9 (1) details concerning all payments made under
10 contracts for the installation of energy efficiency measures;

11 (2) details concerning all expenditures made
12 in administering the provisions of the Energy Efficiency and
13 Renewable Energy Bonding Act;

14 (3) a list of all buildings in which energy
15 efficiency measures were installed;

16 (4) details showing how the cost savings were
17 calculated;

18 (5) an analysis of whether the program has
19 been cost-effective;

20 (6) a report showing progress made in
21 complying with the state plan developed pursuant to Section 4
22 of the Energy Efficiency and Renewable Energy Bonding Act and,
23 if in noncompliance, a plan for achieving compliance in the
24 future;

25 (7) a summary of activities being conducted

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1 during the present fiscal year; and

2 (8) any additional information that will
3 assist the legislature and the governor in evaluating the
4 program.

5 Section 13. A new section of the Tax Administration Act
6 is enacted to read:

7 "[NEW MATERIAL] DISTRIBUTION--ENERGY EFFICIENCY AND
8 RENEWABLE ENERGY BONDING FUND--GROSS RECEIPTS TAX.--A
9 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
10 made to the energy efficiency and renewable energy bonding fund
11 in the amount of two hundred thousand dollars (\$200,000) from
12 the net receipts attributable to the gross receipts tax imposed
13 by the Gross Receipts and Compensating Tax Act. The
14 distribution shall be made:

15 A. after the required distribution pursuant to
16 Section 7-1-6.4 NMSA 1978;

17 B. contemporaneously with other distributions of
18 net receipts attributable to the gross receipts tax for payment
19 of debt service on outstanding bonds or to a fund dedicated for
20 that purpose; and

21 C. prior to any other distribution of net receipts
22 attributable to the gross receipts tax."

23 Section 14. Section 22-8-25 NMSA 1978 (being Laws 1981,
24 Chapter 176, Section 5, as amended) is amended to read:

25 "22-8-25. STATE EQUALIZATION GUARANTEE DISTRIBUTION--
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1 DEFINITIONS--DETERMINATION OF AMOUNT.--

2 A. The state equalization guarantee distribution is
3 that amount of money distributed to each school district to
4 ensure that the school district's operating revenue, including
5 its local and federal revenues as defined in this section, is
6 at least equal to the school district's program cost.

7 B. "Local revenue", as used in this section, means
8 seventy-five percent of receipts to the school district derived
9 from that amount produced by a school district property tax
10 applied at the rate of fifty cents (\$.50) to each one thousand
11 dollars (\$1,000) of net taxable value of property allocated to
12 the school district and to the assessed value of products
13 severed and sold in the school district as determined under the
14 Oil and Gas Ad Valorem Production Tax Act and upon the assessed
15 value of equipment in the school district as determined under
16 the Oil and Gas Production Equipment Ad Valorem Tax Act. The
17 school district shall budget and expend twenty percent of the
18 total revenue receipts for capital outlay.

19 C. "Federal revenue", as used in this section,
20 means receipts to the school district, excluding amounts that,
21 if taken into account in the computation of the state
22 equalization guarantee distribution, result, under federal law
23 or regulations, in a reduction in or elimination of federal
24 school funding otherwise receivable by the school district,
25 derived from the following:

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1 (1) seventy-five percent of the school
2 district's share of forest reserve funds distributed in
3 accordance with Section 22-8-33 NMSA 1978. The school district
4 shall budget and expend twenty percent of the total forest
5 reserve receipts for capital outlay; and

6 (2) seventy-five percent of grants from the
7 federal government as assistance to those areas affected by
8 federal activity authorized in accordance with Title 20 of the
9 United States Code, commonly known as "PL 874 funds" or "impact
10 aid". The school district shall budget and expend twenty
11 percent of the grant receipts for capital outlay.

12 D. To determine the amount of the state
13 equalization guarantee distribution, the [~~state superintendent~~]
14 secretary of public education shall:

15 (1) calculate the number of program units to
16 which each school district is entitled using an average of the
17 MEM on the fortieth, eightieth and one hundred twentieth days
18 of the prior year; or

19 (2) calculate the number of program units to
20 which a school district operating under an approved year-round
21 school calendar is entitled using an average of the MEM on
22 appropriate dates established by the state board; or

23 (3) calculate the number of program units to
24 which a school district with a MEM of two hundred or less is
25 entitled by using an average of the MEM on the fortieth,

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1 eightieth and one hundred twentieth days of the prior year or
2 the fortieth day of the current year, whichever is greater; and

3 (4) using the results of the calculations in
4 Paragraph (1), (2) or (3) of this subsection and the
5 instructional staff training and experience index from the
6 October report of the prior school year, establish a total
7 program cost of the school district;

8 (5) calculate the local and federal revenues
9 as defined in this section;

10 (6) deduct the sum of the calculations made in
11 Paragraph (5) of this subsection from the program cost
12 established in Paragraph (4) of this subsection; ~~and~~

13 (7) deduct the total amount of guaranteed
14 energy savings contract payments that the ~~state~~
15 ~~superintendent~~ secretary of public education determines will
16 be made to the school district from the public school utility
17 conservation fund during the fiscal year for which the state
18 equalization guarantee distribution is being computed; and

19 (8) deduct the total amount of cost savings
20 certified by the energy, minerals and natural resources
21 department for buildings in the school district pursuant to the
22 Energy Efficiency and Renewable Energy Bonding Act.

23 E. The amount of the state equalization guarantee
24 distribution to which a school district is entitled is the
25 balance remaining after the deductions made in Paragraphs (6),

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1 ~~[and]~~ (7) and (8) of Subsection D of this section.

2 F. The state equalization guarantee distribution
3 shall be distributed prior to June 30 of each fiscal year. The
4 calculation shall be based on the local and federal revenues
5 specified in this section received from June 1 of the previous
6 fiscal year through May 31 of the fiscal year for which the
7 state equalization guarantee distribution is being computed.
8 In the event that a school district has received more state
9 equalization guarantee funds than its entitlement, a refund
10 shall be made by the school district to the state general
11 fund."

12 Section 15. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2004.